



Steven W. Troxler
Commissioner

**North Carolina Department of Agriculture
and Consumer Services**
Veterinary Division

Christina L. Waggett
Assistant Commissioner
for Consumer Protection

Douglas Meckes, DVM
State Veterinarian

July 15, 2021

Heather Trull
Owner
Furbaby Country Club Corp
142 Consumer Square Drive
Mooresville, North Carolina 28117

NOTICE of CIVIL PENALTY

Re: CIVIL PENALTY ASSESSMENT for VIOLATIONS of TITLE 02 N.C. ADMINISTRATIVE CODE ("NCAC") CHAPTER 52J SECTIONS .0201(h); .0204(b); .0206; and .0209(7).

AWS-CP-2021-9

Facility: Furbaby Country Club
License Number 20522

Dear Ms. Trull:

Pursuant to NCGS § 19A-40, I am issuing this notice that you, as owner of the Furbaby Country Club Corp, are hereby assessed a civil penalty of \$1,250.00 as provided in the enclosed Notice of Violations.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N.C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to NCGS § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may contact me by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. Patricia Norris
Director, Animal Welfare Section
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by NCGS § 150B-23. The petition must be filed with the N.C. Office of Administrative Hearings ("OAH") within 60 days from the date of this document. Additionally, the petition must be accompanied by a filing fee of twenty dollars (\$20.00). Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone at 919-431-3000.

You must serve NCDA&CS by mailing a copy of the petition to:

Ms. Tina Hlabse
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,



Patricia Norris, DVM, MS
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: R. Douglas Meckes, DVM, State Veterinarian; Tina Hlabse, General Counsel, NCDA&CS; Christina L. Waggett, Assistant Commissioner, NCDA&CS; Christopher R. McLennan, Assistant Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT
OF AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION
ANIMAL WELFARE SECTION

| | | |
|---------------------------|---|--------------------------------|
| IN THE MATTER OF |) | NOTICE OF VIOLATION and |
| |) | ASSESSMENT of CIVIL PENALTY |
| HEATHER TRULL |) | for VIOLATION of TITLE 02 N.C |
| OWNER OF |) | ADMINISTRATIVE CODE ("NCAC") |
| |) | CHAPTER 52J SECTIONS .0201(h); |
| FURBABY COUNTRY CLUB CORP |) | .0204(b); .0206; and .0209(7). |
| |) | |

Acting pursuant to NCGS § 19A-40, Dr. Patricia Norris, Director, Animal Welfare Section ("AWS"), North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") makes the following:

FINDINGS OF FACT

1. At all times pertinent to this matter, Furbaby Country Club Corp (the "kennel") was a boarding kennel, licensed pursuant to N.C.G.S. § 19A-28.
2. On June 17, 2021, AWS received a complaint alleging a dog named Oakley escaped on June 15, 2021 while in the care and custody of the kennel and was missing for several hours. Based on the information in the complaint, AWS opened an investigation.
3. As part of the investigation, AWS conducted a site visit of the kennel on June 25, 2021. This site visit revealed the following:
 - (a) observation of the area where Oakley had been confined revealed that the animals, on June 15, 2021, would have had access to the Emergency Exit door and could have easily opened the door by jumping up and pressing on the bar of the door;
 - (b) the exercise area outside of the Emergency Exit door was not surrounded by a 5-foot perimeter fence and therefore, animals being confined in that area while unsupervised on June 15, 2021 was a violation of 02 NCAC 52J .0201(h);
 - (c) in addition, the fencing of the exercise area behind the Emergency Exit door was not secure enough to prevent escape of the confined animals in violation of 02 NCAC 52J .0204(b);
 - (d) the AWS Inspector requested to view the video for June 15, 2021. The only available video for that date was time stamped at 3:54 PM or later. No video was available for viewing during the 11:00AM – 3:30 PM time interval when the incident occurred on June 15, 2021;
 - (e) during the site visit, 2 dogs were observed to have no access to water in their primary enclosures in violation of 02 NCAC 52J .0206;
 - (f) during the site visit, several dogs were confined to areas of the facility that were not primary enclosures or exercise areas in violation of 02 NCAC 52J .0209(7); and
4. A review of relevant documentation concerning the kennel revealed the following:
 - (a) on April 19, 2021, a Facility Compliance Inspection ("FCI") was conducted. The FCI noted 12 dogs housed in primary enclosures without access to water. The kennel was cited for this violation of 02 NCAC 52J .0206 and the owner counselled about compliance with this regulation;
 - (b) on May 5, 2021, AWS issued a Notice of Warning to the kennel for violation of 02 NCAC 52J Sections .0201(h); .0204(e); and .0206; and

(c) The May 5, 2021 Notice of Warning notified the kennel of the following:

Continued or future violation of these statutes or regulations will be considered a willful disregard or violation of the N.C. Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation may result in action against your facility's licenses pursuant to N.C.G.S. § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under N.C.G.S. § 19A-40.

CONCLUSIONS

As a result of this investigation, AWS concludes that the kennel, either by act or omission, violated the following provisions:

02 NCAC 52J .0201(h) for failing to have a five-foot perimeter fence when animals had access to an outdoor enclosure when unsupervised on June 15, 2021;

02 NCAC 52J .0204(b) for failing to have the enclosure constructed to prevent the escape of animals resulting in the escape of an animal from the kennel on June 15, 2021;

02 NCAC 52J .0206 for failing to provide continuous access to water for animals in 2 primary enclosures on June 25, 2021; and

02 NCAC 52J .0209(7) for failing to confine all animals in primary enclosures or exercise areas on June 25, 2021.

CIVIL PENALTY

As required by N.C. General Statute § 19A-40, in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly, Heather Trull, as owner and operator of Furbaby County Club Corp, is hereby assessed a civil penalty for the following violations:

\$250.00 for violation of 02 NCAC 52J .0201(h) for failing to have a five-foot perimeter fence when animals had access to an outdoor enclosure when unsupervised on June 15, 2021;

\$500.00 for violation of 02 NCAC 52J .0204(b) for failing to have the enclosure constructed to prevent the escape of animals resulting in the escape of an animal from the kennel on June 15, 2021;

\$400.00 for 2 violations (\$200.00 per violation) of 02 NCAC 52J .0206 for failing to provide continuous access to animals in 2 primary enclosures on June 25, 2021; and

\$ 100.00 for violation of 02 NCAC 52J .0209(7) for failing to confine all animals in primary enclosures or exercise areas on June 25, 2021.

\$1,250.00 TOTAL AMOUNT ASSESSED

Continued or future violation of the statutes or regulations referenced in this letter will be considered a willful disregard or violation of the N.C. Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation may result in action against your facility's license pursuant to NCGS § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under NCGS § 19A-40.

(See Appendix for text of referenced General Statutes and Administrative Code)

July 15, 2021
Date

Patricia Norris, DVM, MS
Patricia Norris, DVM, MS
Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services

Appendix

REFERENCED LAWS AND REGULATIONS

§ 19A-28. License required for public auction or boarding kennel.

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be seventy-five dollars (\$75.00) for each license period or part thereof beginning with the first day of the fiscal year.

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the

violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect.

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

02 NCAC 52J .0201 GENERAL

(h) A separate five-foot perimeter fence is required if any animals have access to an outdoor enclosure, including unsupervised exercise areas.

*History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005.*

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(b) Primary enclosures for dogs and cats shall be structurally sound and maintained in good repair and in a manner to prevent injury to animals and keep other animals out. Primary enclosures shall be constructed so as to provide space to allow each dog or cat to walk, urn about freely, and to easily stand, sit, or lie in a natural position. The height of a primary enclosure other than a cage shall be no less than five feet. All enclosures shall be constructed to prevent the escape of animals.

*History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005; April 1, 1985*

02 NCAC 52J .0206 WATERING

Animals shall have continuous access to fresh water, except as might otherwise be required to provide adequate veterinary care. Watering receptacles shall be durable and kept clean and sanitized. Damaged receptacles shall be replaced.

*History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005*

02 NCAC 52J .0209 CLASSIFICATION AND SEPARATION

Animals housed in the same primary enclosure shall be maintained in compatible groups, with the following additional restrictions:

- (7) All animals shall be confined in primary enclosures or exercise areas.

*History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005.*